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January 16, 1992

Federal Communications Commission
Office of the Secretary, FM Branch
1919 M Street
Washington, D.C. 20554

RECEIVED

JAN 22 1992

FCC MAIL BRANCH

Re: File No. 910208MB
Application of Deas Communications, Inc.
for FM Construction Permit for new
FM Channel 240A, 95.9 mHz
Healdsburg, California

RECEIVED

JAN 23 1992

Dear Secretary:

FM EXAMINERS

I have previously filed a petition to deny the above-referenced application. No hearing date has yet been set.

Some additional information has just come to light which bears upon the character of the applicant, Deas Communications, Inc. Enclosed is a copy of a article appearing in the Healdsburg Tribune for January 15, 1992, which indicates that the Sonoma County Grand Jury has called for a full investigation into allegations of conflicts of interest on the part of Edgar Deas, who is listed in the FCC Form 301 as the president, director and sole voting shareholder of the applicant. Also enclosed are the relevant pages of the 1991 Final Report of the Sonoma County Grand Jury.

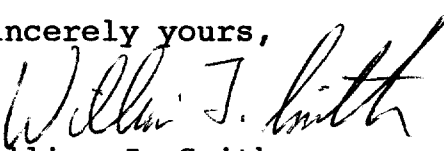
A violation of the California conflict of interest laws would obviously raise a character issue against the applicant. The fact of the investigation should require that the applicant supplement the application with new information under question 12 of FCC Form 301. That form also provides that "In accordance with 47 C.F.R. Section 1.65, the APPLICANT has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished."

It would not be in the public interest to approve Mr. Deas' application for an FM permit until the conclusion of the

Federal Communications Commission
Page 2
January 16, 1992

investigations by the Sonoma County District Attorney and other public officials, as set forth in the Grand Jury Report.

Sincerely yours,



William J. Smith

WJS/am
Enclosures

cc w/encl: Mario Edgar Deas
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RECEIVED
JAN 22 1992
FCC IV

THE SONOMA COUNTY, CALIFORNIA
1991 GRAND JURY
FINAL REPORT

Sonoma County Hall of Justice
600 Administration Drive
Santa Rosa, California 95403

CITY OF HEALDSBURG
CONFLICT OF INTEREST

REASON FOR INVESTIGATION:

The 1991 Grand Jury received a complaint that a member of the Healdsburg City Council may have a possible conflict of interest. The basis for the complaint was a councilman's ownership of a company which has conducted business with the city. Ownership and financial interest in properties affected by the Healdsburg Community Redevelopment Agency (CRA) were also noted. This person is a member of both governing bodies.

BACKGROUND:

There are various laws that apply in different ways as to what constitutes a conflict of interest. These laws, and the governing bodies they pertain to, with the specific remedies for failure to comply, are listed below:

1. The Political Reform Act 1974, Government Code, Sections 81000-91015.
2. Fair Political Practices Commission (FPPC).
3. Statement of Economic Interests Form 721.
4. California Health and Safety Code Sections 33130 and 33130.5.
5. California Government Code Section 1090.
6. California Common Law.

The application of the conflict of interest provisions of the Political Reform Act are covered by California Government Code, Sections 81000-91015. All references to regulations of the California Fair Political Practices Commission

(FPPC) are in Title 2, Division 6, of the California Code of Regulations, Sections 18000, et. seq.

The Political Reform Act (an initiative enacted in 1974 by the people of California, known as Proposition 9) requires certain designated public officials at all levels of government to disclose publicly their private economic interests annually and to disqualify themselves from participating in decisions in which they have a financial interest as defined in the regulation.

A major stated purpose of this initiative measure is, "Assets and income of public officials, which may be materially affected by their official actions, should be disclosed, and in appropriate circumstances the official should be disqualified from acting, in order that conflicts of interest may be avoided."

The Political Reform Act is intended to prevent conflicts of interest by disclosure and by disqualification.

A public official or employee has a conflict of interest when all of the following occur:

1. The official makes, participates in, or uses his or her official position to influence a government decision.
2. It is reasonably foreseeable that the decision will affect the official's economic interest.
3. The effect of the decision on this official's economic interest will be material.
4. The effect of the decision on the official's economic interest will be distinguishable from its effect on the public generally.

The Political Reform Act further states that if a public official suspects he or she may have a conflict of interest in an upcoming decision, the attorney for the official's agency should be consulted. The official can also ask the legal divi-

sion of the FPPC for legal advice. If the Commission advises an official in writing that disqualification is not necessary, the official is provided with immunity against any administrative action brought by the Commission arising from the same conflict of interest charges. Reliance on the written advice also serves as evidence of good faith conduct.

All city council members and other elected officials must file a Statement of Economic Interests, pursuant to Government Code, Section 87500, Form 721, when taking office, at the beginning of each year, or when a change is made in his or her financial holdings. This form is filed with the City Clerk, who forwards a copy to the FPPC, and is available to the public while the official remains in office.

The Form 721 statement discloses the official's investments, with a range of value, percent of ownership, and date, if disposed of; ownership of real property, with address, fair market value, and date, if disposed of; range of income, addresses and renters of rental property.

The California Health and Safety Code, Section 33130, states that no community officer who, in the course of his or her duties, is required to participate in the formulation of, or to approve plans or policies for the redevelopment of a project, shall acquire any interest in any property included within a redevelopment project area within the community. If such officer owns or has any direct or indirect financial interest in property included within a project area, that officer shall immediately make a written disclosure of that financial interest to the agency and the legislative body and the disclosure shall be entered in the minutes of the agency and the legislative body. Failure to make the disclosure required by this subdivision constitutes misconduct in office. The Code further states that the community officer who obtains a rental or lease agreement of

property within the project area must immediately make written disclosure of that fact to the agency and the legislative body.

The California Health and Safety Code, Section 33130.5, states that an officer of the agency or community, may purchase or lease property within a Redevelopment Project Area after a project area has been established. Any such officer who purchases or leases such property shall immediately make a written disclosure to the agency and legislative body, which disclosure shall be entered in the minutes of the agency. Any such officer shall thereafter be disqualified from voting on any matters directly affecting such a purchase, lease, or residency. "Failure to disclose constitutes misconduct in office."

In addition to the requirements in the Political Reform Act, the California common law as declared by the courts requires that "...a public officer...exercise the powers conferred on him with disinterested skill, zeal and diligence and primarily for the benefit of the public." Noble V. City of Palo Alto (1928) 89 Cal. App. 47, 51.

In addition to prohibiting participation in decisions in which an officer has a financial conflict, the California common law would prohibit participation in decisions that show the appearance of conflict where an officer has a nonfinancial or personal interest.

PROCEDURE:

Members of the Grand Jury interviewed city officials of Healdsburg, including various members of the City Council/CRA, the Finance Director and City Attorney. In addition, the Sonoma County Counsel and the Sonoma County Assistant District Attorney were interviewed. Supporting data was obtained from the records of the Healdsburg City Clerk, Finance Director, and Business De-

partment. Additional information was obtained from the Sonoma County Recorder, Tax Assessor's Office, Tax Collector, Sonoma County Library, and Sonoma County Law Library.

Minutes from the Healdsburg City Council and Community Redevelopment Agency (CRA) meetings from January 1989 through October 7, 1991, were analyzed to determine which officials participated, how votes were recorded, and when members abstained on issues where a conflict of interest was suspected.

FINDINGS:

1. Section 1090 of the Government Code specifically directs that city officers shall not be financially interested in any contract made by them in their official capacity or by any body or board of which they are members.

2. According to invoices and voting records of the Healdsburg City Council from June 28, 1990 through May 30, 1991, Mr. M. Edgar Deas, a member of the City Council, did not abstain when approving the payment of warrants. Twenty-one invoices in excess of \$250 during FY 1990/91, were paid to E & M Electric and Machinery, Inc., a company in which Mr. Deas owns a significant financial interest, over 10 percent interest and over \$100,000 in value, as stated on his Form 721 for 1990-91.

3. In August 1991, according to a memo to the City's Electric Department personnel, the City Attorney issued an opinion and advised the City that, due to a possible conflict of interest, all business with the council member's company, E & M Electric, should cease immediately.

4. A civil remedy exists for violation of Section 1090: if there has been a violation of that section, the City of Healdsburg may be entitled to recover all

monies paid to E & M Electric. The money may be claimed even if the City keeps the material. Thomson v. Call (1985) 38 Cal.3d 633.

5. If a council member owns property in or near a CRA project area (within 300 to 2500 feet), according to California Administrative Code, Section 18702.3, development in that area may have a material financial effect on council member's property. The Redevelopment Commission member may be required to abstain from voting on the project area activity and redevelopment budget.

6. The regulations of the FPPC provided some guidelines in determining whether an effect is "material": for property located more than 300 but less than 2500 feet from the property which is the subject of the decision, the effect is "material" if it will increase the value of the officer's property by \$10,000, or increase the rental value by \$1,000 or more over a 12 month period.

As per California Administrative Code, Section 18702.3, the FPPC has made it clear that an effect may be "material" and require that an officer disqualify himself even if it does not meet the above criteria.

In the case In re Gillmor, (1977) 3 FPPC 38, the FPPC explained why a financial effect is "foreseeable", viz "...the purpose of development within a redevelopment zone is to raise property values and increase business in the area." The FPPC concluded in that case that the official should disqualify himself pursuant to the general rule stated in California Code of Regulations, Section 18702(b) which is that "The financial effect of a governmental decision is material if the decision will have a significant effect on the official or a member of the official's immediate family, or the real property, which is an economic interest of the official."

7. Mr. Deas has a partnership interest in a property management company, Deas Owen Properties. The company business address is 454

Hidden Acres Road, Healdsburg (APN 00251143).

8. Two parcels of property, 12 Matheson Street (APN 00224303) and 235/241 Healdsburg Avenue (APN 00224307) are within 300 feet of a Redevelopment Project Area. Current ownership is in the names of the council member's children and an in-law, who is also a partner in Deas Owen Properties.

9. On the 1991 Form 721 Schedule C-1, Mr. Deas declared that his interest in the property at 12 Matheson was disposed of on December 31, 1990, and the property at 235/241 Healdsburg Avenue, of which he was a part owner, was disposed of on January 2, 1991. The property was transferred 50 percent to his four children, in equal shares and 50 percent remained with his in-law. The County of Sonoma Tax Assessor parcel record indicates a Sale Code of 8 for these properties, which is a non-reappraisal transfer parent to child, spouse, etc. The mailing address for the annual tax statement is in care of M. Edgar and Judith L. Deas, 456 Hidden Acres Road, Healdsburg (APN 00251142). This is the council member's personal residence. According to County Tax records, taxes for fiscal year 1990/91 were paid by the council member's property management company, Deas Owen Properties.

10. Mr. Deas is a part owner with over a 10 percent interest and more than \$100,000 in value of a third parcel of property at 128 Mill Street, Healdsburg (APN 00226115). This property is within 2500 feet of a CRA Project Area. The taxes are paid by the council member's company, E & M Electric and Machinery, Inc.

11. A review of the Healdsburg CRA minutes from January 9, 1989 through October 7, 1991, showed the following:

- * January 9, 1989: Deas property disclosed within CRA Project Area.
- * February 20, 1990: The hotel project was discussed. Deas did not

abstain, did not declare conflict.

- * February 27, 1990: Deas declared a conflict on hotel project.
- * April 2, 1990: Agency voted to amend redevelopment budget. Deas voted, did not abstain.
- * May 21, 1990: Deas declared a conflict on hotel.
- * July 2, 1990: Deas declared a conflict on hotel.
- * January 21, 1991: Pete Peterson and Carla Howell declared conflict of interest and ownership interest within CRA. Deas did not declare conflict.
- * March 4, 1991: Healdsburg CRA budget was approved. Deas did not abstain or declare a conflict of interest.
- * April 1, 1991: Deas and Peterson declared conflict of interest on Swenson project and hotel project.
- * August 5, 1991: Hotel project was discussed. Only Peterson abstained. Deas did not abstain or declare conflict of interest but participated in discussion.
- * August 19, 1991: Deas and Peterson declared a conflict of interest on the hotel project. Hotel project was at this time postponed.
- * September 16, 1991: 1991-92 CRA budget approved. Deas did not abstain or declare conflict.
- * October 7, 1991: Termination of development of hotel project. Deas and Peterson abstained.

12. Health and Safety Code Sections 33130 and 33130.5, require a written disclosure of direct or indirect financial interest in property included within a Redevelopment Project Area. A review of the CRA minutes from January 1991 to October 7, 1991 does not show a written disclosure of the following properties:

12 Matheson Street and 235/241 Healdsburg Avenue. In addition, the written disclosure of any rental or lease agreements obtained by the council member for property within the Redevelopment Project Area were not found in the CRA minutes or the City Council minutes.

13. The Sonoma County Counsel has stated, "...If Mr. Deas continues to own a beneficial interest in the property, mere transfer of legal title would not exempt him from the provisions of the Political Reform Act...." Mr. Deas is a partner in Deas Owen Properties, as stated in his Form 721, which continues to pay the taxes on properties within the CRA Project Area. Consequently, Mr. Deas may continue to have a financial interest in the property although he is no longer on the title.

14. Based on California common law, and the provisions of the Political Reform Act, the council member may still have a beneficial interest in property even though he has transferred the title to his children. If the council member has only conveyed the legal title to his half interest in the property, and has his children acting as his agent the council member continues to have a financial interest in the property.

15. Upon taking office, the city council members are instructed on the conflict of interest laws by the City Attorney. He prepared a comprehensive booklet, dated June 4, 1991, covering conflict of interest issues for their guidance.

CONCLUSIONS:

Based on the information available to the Grand Jury, it is the opinion of the Jury that:

BUSINESS INTEREST

- * The fact that council member Deas owns a company which does busi-

ness with the city suggests a conflict of interest which should have ceased upon his taking office. To be an effective member of the city council, he should be willing, and the law requires him, to give up his business relationship with the city.

PROPERTY OWNERSHIP

- * Ownership and/or financial interest in property affected by decisions and votes of a governing board should be reported to other members and the public, and members should abstain from voting or participating in discussions to avoid conflicts of interest.
- * When three members of a City Council/Redevelopment Agency declare conflicts of interest because each as a property interest near or within an agency project, as occurred in Healdsburg, that project cannot be adequately discussed or voted on with only two qualified members.
- * Transferring title to property in or near a CRA Project Area to an official's children or other family members but still paying the taxes through a property management company owned by the official has all the appearances of a conflict of interest. Proof should be provided of either a payment of full value if a sale is claimed, or of an irrevocable gift if a gift is claimed. Council member Deas appears to have done nothing except deed away his recorded title.
- * An elected official representing the people should avoid even the appearance of a conflict of interest.

RECOMMENDATIONS:

1. The Sonoma County District Attorney, the Healdsburg City Attorney, and the FPPC should evaluate the various conflict of interest laws to determine

whether a specific violation of conflict of interest did or did not occur.

2. The Sonoma County District Attorney should evaluate whether or not a formal contract document existed for the sale of goods, and if Mr. Deas knowingly violated Government Code, Section 1090 when his business, E & M Electric, sold goods to the City of Healdsburg.

3. The Healdsburg City Attorney should evaluate whether to pursue a claim under Government Code Section 1090, to determine if the city is entitled to recover from Mr. Deas monies paid to E & M Electric. Thomson v. Call (1985) 38 Cal.3d 633.

4. All City Council members and Community Redevelopment Agency members must comply with the following as they pertain to conflict of interest:

- * The Political Reform Act 1974, Government Code, Sections 81000-91015.
- * Fair Political Practices Commission (FPPC).
- * Statement of Economic Interests Form 721.
- * California Health and Safety Code, Sections 33130 and 33130.5.
- * California Government Code, Section 1090.
- * California Common Law.

5. The City Attorney should investigate and be made aware of any potential conflict of interest when City Council members take office.

6. All members of the Community Redevelopment Agency must comply with the California Health and Safety Code, Sections 33130 and 33130.5, which require any officer to make a written disclosure if the officer owns or has any direct or indirect financial interest in property included within a project area.

RESPONSE REQUIRED ON FINDINGS AND RECOMMENDATIONS:

Healdsburg City Attorney - 1, 3, 5

Healdsburg City Council Members - 4

Sonoma County District Attorney - 1, 2

Healdsburg Community Redevelopment Agency - 4, 6

The Healdsburg Tribune

Our 127th Year Number 28 ©

Enterprise & Scimitar, Healdsburg, CA

Wednesday, January 15, 1992 50¢

Deas target of grand jury probe

His business sold goods to city — land deal cited

by BARRY W. DUGAN
Tribune Editor

The Sonoma County Grand Jury has called for a full investigation into allegations of conflicts of interest on the part of City Councilman Edgar Deas, claiming that his business deals with the city and financial interest in property near the city-owned hotel site appear to violate state conflict of interest laws.

The grand jury's report on Deas, released last Friday, closely mirrors allegations made in September of last year by an unnamed citizens group. Those charges, reported in the Tribune and denied by Deas at the time, are currently under investigation by the state Fair Political Practices Commission.

The grand jury recommends that the conflict of interest allegations be evaluated by the FPPC, District Attorney and the Healdsburg City Attorney to determine whether state laws have been violated.

Deas, who has not spoken to the press in weeks, did not respond to inquiries from the Tribune Monday. But in an earlier interview, Deas denied the conflict charges, calling those who filed the anonymous complaint "witch hunters."

According to the grand jury's findings, Deas failed to abstain from voting on payments to his own company, E&M Electric for parts and services, from June 28, 1990 through May 30, 1991.

According to the city Finance Department, the city has paid E&M a total of \$32,542 since Deas took office in 1988. In an

interview in with the Tribune in September, however, Deas said that E&M Electric averaged about \$100 per month worth of business with the city.

"The number is so insignificant that it doesn't really make any difference," Deas said. He said at the time that his company was convenient for emergency city repairs.

According to city officials, the city attorney at the time Deas took office, Bob Crawford, said that unless the amount of business between the city and E&M increased while Deas was in office, it would not constitute a conflict of interest for him to continue doing business with the city.

Current City Attorney Ken Wilson last year recommended that the city stop doing business with Deas' company to avoid the appearance of a conflict. Business between the city and



EDGAR DEAS

E&M has stopped since September of 1991.

Despite that, the grand jury concluded that Deas owning a

(Please turn to page 7)

What the Grand Jury said:

The Sonoma County Grand Jury investigated alleged conflict of interest on the part of Councilman Edgar Deas for his ownership of land near the hotel site and for his company's business dealings with the city since he took office in 1988.

The grand jury concluded:

E&M ELECTRIC

• Deas failed to abstain when the city council approved payments to his company, E&M Electric. (City records show payments of \$32,542 since 1988.)

• This "suggests a conflict of interest which should have ceased upon his taking office."

HOTEL LAND

• Deas transferred ownership of land adjacent to hotel site to family members, but continued to pay taxes and possibly have a beneficial financial interest in the property.

• Deas alternately declared a conflict on hotel issue and abstains and later fails to declare conflict and discuss hotel.

RECOMMENDATIONS

• Allegations of conflict by Deas should be investigated by state Fair Political Practices Commission, Sonoma County District Attorney and Healdsburg City Attorney.

DEAS

(from page one)

company which did business with the city "suggests a conflict of interest which should have ceased upon his taking office. To be an effective member of the city council, he should be willing, and the law requires him, to give up his business relationship with the city."

The jury's report also states that the "city of Healdsburg may be entitled to recover all monies paid to E&M Electric. The money may be claimed even if the City keeps the material."

The other topic of investigation by the grand jury, which is a civil watchdog group with no enforcement power, involves Deas' ownership of land across the street from the city-owned hotel site and within the city's Community Redevelopment (CRA) area.

Even though Deas transferred the land to family members in January of 1991, the grand jury said that he "appears to have done nothing except deed away his recorded title."

Cited as evidence is the fact that Deas is partner in Deas Owen Properties, a property management company in which he is involved with an in-law. Taxes on the land were paid for the fiscal year 1990/91 by Deas Owen Properties, which lists Deas' home address on the annual tax statement.

The report cites a chronology of CRA meetings during which Deas has both abstained on the hotel topic and discussed it. During a Feb. 20, 1990 meeting the hotel was discussed and Deas did not abstain and did not declare a conflict. A week later, at the Feb. 27 meeting, Deas did declare a conflict on

the hotel project, according to the grand jury report.

As recently as Aug. 5, 1991, Deas did not declare a conflict of interest at a CRA meeting and discussed the hotel project, according to the report.

City records also show that city attorney Ken Wilson, who has adamantly advised Deas against discussing the hotel, was absent from the Aug. 5 meeting. During the Aug. 19 meeting Deas did declare a conflict and abstained from discussion.

The grand jury quotes the Sonoma County Counsel as saying that "if Mr. Deas continues to own a beneficial interest in the property, mere transfer of legal title would not exempt him from the provisions of the Political Reform Act."

Since Deas is a partner in Deas Owen Properties, which pays taxes on the land in the CRA area, "Mr. Deas may continue to have a financial interest in the property although he is no longer on the title," according to the report.

The grand jury's conclusion was that Deas' actions of transferring title of the property while still paying the taxes through his property management company "has all the appearances of a conflict of interest...An elected official representing the people should avoid even the appearance of a conflict of interest."

During the September interview, Deas told the Tribune that "I've said all along that I don't think I have a conflict, it's so ludicrous. The people of Healdsburg would have to think they elected a crook to think there is a conflict there."